

SAMINATHAN CHETTY v. SILVA.

D. C., Galle, 6,400.

1904.

June 28.

Prescription—Action against executor de son tort—Appointment of administrator—Administrator made party defendant—Administrator's plea of prescription.

Where an action was brought in time against an executor *de son tort* of a deceased debtor and, upon the appointment of an administrator, obtained leave to add him as a party defendant, and where the administrator pleaded prescription,—

Held, that as he was made a party, in the same representative character as that filled by the original defendants, his plea of prescription was not good.

THIS was an action for the value of rice supplied to a deceased person on 16th January, 1901, 20th February, 1901, and 5th March, 1901. It was instituted on 21st October, 1901, against two persons as executors *de son tort*, who had intermeddled in the estate. An administrator having been appointed on 21st January, 1902, the plaintiff on 24th May, 1902, got leave of Court to add him as a party defendant, and on 16th July, 1902, filed an amended plaint, in which the administrator was added as third defendant.

The administrator pleaded that the claim was prescribed as against him. The District Judge gave plaintiff judgment as against the administrator.

He appealed. The case was argued on 14th June, 1904.

H. A. Jayawardene, for appellant.

Van Langenberg, for respondent.

28th June, 1904. WENDT, J.—

The question on this appeal is, whether the action against the appellant is barred by limitation. He was added as a defendant seven months after the filing of the plaint, and it is admitted that, if the action is to be deemed to have been commenced as against him at the date when he was brought in, it is barred. Originally the first and second defendants were sued as executors *de son tort* of one Jayasooriya, who had been plaintiff's debtor. Pending the action, which was brought in time as against those defendants, letters of administration to Jayasooriya's intestate estate were issued to appellant, and he was thereupon added. It is therefore clear that appellant was made a party in the same representative character as that filled by the original defendants, and that as against him this action must be regarded as having been commenced at the date when it was begun, as against the first and second defendants.

The appeal will therefore be dismissed with costs.

SAMPAYO, A.J.—I agree.